

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII**

----- In the Matter of -----	)	
	)	
PUBLIC UTILITIES COMMISSION	)	DOCKET NO. 2008-0273
	)	
Instituting a Proceeding to	)	
Investigate the Implementation	)	
of Feed-In Tariffs.	)	
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PUBLIC UTILITIES  
COMMISSION  
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**HAWAII BIOENERGY, LLC'S MOTION FOR APPROVAL  
TO AMEND ITS STATUS AS AN INTERVENOR/PARTY TO A PARTICIPANT**

**DECLARATION OF JOEL K. MATSUNAGA**

**and**

**CERTIFICATE OF SERVICE**

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**HAWAII BIOENERGY, LLC'S MOTION FOR APPROVAL  
TO AMEND ITS STATUS AS AN INTERVENOR/PARTY TO A PARTICIPANT**

HAWAII BIOENERGY, LLC ("HBE"), by and through its attorneys, Morihara Lau & Fong LLP, hereby moves the Honorable Public Utilities Commission of the State of Hawaii (the "Commission") for approval to amend its current status as an intervenor/party to a participant in this proceeding ("Motion"). This Motion is made pursuant to Hawaii Administrative Rules ("HAR") §§ 6-61-41 and 6-61-56, and is supported by the Declaration of Joel K. Matsunaga attached hereto and incorporated herein by reference. Specifically, HBE is requesting approval that its participation in this proceeding be hereinafter reduced to allow HBE to: (1) monitor the proceeding by receiving all filings by the Commission and the other parties to ensure, among other things, that its interests and/or rights (financially or otherwise), as alleged in its November 12, 2008 Motion to Intervene, are adequately protected, and (2) stand on its Opening Statement of Position, filed on February 25, 2009, as its final statement of position in accordance with the Stipulated Regulatory Schedule approved by the

Commission.<sup>1</sup> Pursuant to HAR § 6-61-41(b), HBE does not request a hearing on this Motion. In support of its Motion, HBE states as follows:

1. Brief Background and Reasons for Requested Relief

By Order Granting Intervention, filed on November 28, 2008, the Commission granted intervenor status to HBE. As such, HBE is currently a party to the instant proceeding. As an intervenor or party in this proceeding, HBE believes that it has fully participated in accordance with said Order Granting Intervention and Order Approving the HECO Companies' Proposed Procedural Order, as Modified, filed on January 20, 2009 ("Order Approving Procedural Order").

As previously stated in prior submissions, HBE is a limited liability company, which has three (3) land partners that, in total, own approximately 430,000 acres of land throughout the State of Hawaii, and such properties are situated within the service territories of HECO, HELCO and MECO.<sup>2</sup> HBE's three (3) land partners are joined by three (3) venture capital firms in forming HBE (collectively the "HBE Partners").<sup>3</sup> HBE's mission is to reduce Hawaii's energy costs, greenhouse gas emissions, and dependence on imported fossil fuels through the research and development of local renewable bioenergy projects. HBE is moving forward with activities and plans to develop such renewable projects in Hawaii. Since HBE was formed on July 11, 2006, it has invested significant resources and finances in

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<sup>1</sup> See Order Approving the HECO Companies' Proposed Procedural Order, as Modified, filed on January 20, 2009. Hawaiian Electric Company, Inc. ("HECO") and its subsidiaries Maui Electric Company, Limited ("MECO") and Hawaii Electric Light Company, Inc. ("HELCO") are collectively hereinafter referred to as the "HECO Companies."

<sup>2</sup> HBE's partners include Kamehameha Schools, Maui Land & Pineapple Company, Inc., and Grove Farm Company, Inc.

<sup>3</sup> The three (3) venture capital firms are as follows: Khosla Ventures, Finistere Ventures, and Ohana Holding, Inc.



developing the information, studies, and other analysis on which its renewable energy projects will be based. HBE expects that the biomass-based renewable energy projects will be of significant size.

Upon review of the Joint Proposal on Feed-In Tariffs ("FIT") submitted by the HECO Companies and the Division of Consumer Advocacy ("Consumer Advocate") on December 23, 2008, the various opening statements of positions filed by the parties (including the HECO Companies and the Consumer Advocate), and other documents filed in this proceeding to date, said proposed FIT appears to limit the size of the renewable energy systems to no greater than 500 kilowatts ("kW") for the island of Oahu and 250 kW for the islands of Maui and Hawaii, and restrict the technology to PV systems, concentrated solar power, in-line hydropower, and wind renewable energy systems. Assuming that these limitations and/or restrictions are ultimately approved and adopted by the Commission to be incorporated as part of the HECO Companies' initial FIT, HBE's proposed biomass-based renewable energy projects, described above, will be significantly larger than the systems being considered in this proceeding and considered a "non-eligible" technology. Accordingly, HBE's proposed systems will likely be, in effect, disqualified at this juncture and at least until such initial FIT is updated by the HECO Companies (e.g., at least 2 years after initial implementation of the initial FIT as represented by the HECO Companies and Consumer Advocate in their December 23, 2008 proposal and February 25, 2009 opening statement of position).

Nonetheless, HBE contends that its participation in this proceeding to the degree allowed by the Commission<sup>4</sup> is critical to ensure that the key policy and design elements of a FIT ultimately approved and adopted by the Commission in this proceeding do not materially impact HBE and/or its affiliates in its pursuit of present and future renewable bioenergy projects in the State of Hawaii. In light of the above and upon further review of the final issues set by the Commission in this proceeding,<sup>5</sup> HBE now desires and seeks Commission approval to amend its status as an intervenor/party to a participant. HBE contends that it has met the requirements for participation without intervention under HAR § 6-61-56 since it has already met the requirements for intervention under HAR § 6-61-55, which HBE believes carries an even higher standard and, therefore, incorporates by reference HBE's allegations set forth in its November 12, 2008 Motion to Intervene. As a participant and consistent with its actions to date as a party or intervenor in this proceeding, HBE will not participate in a manner that would unreasonably broaden the pertinent issues established in this docket or

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<sup>4</sup> HAR § 6-61-56 (a) provides, in relevant part: "A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the [C]ommission."

<sup>5</sup> Footnote 21 of HBE's November 12, 2008 Motion to Intervene stated the possibility that HBE may be requesting Commission approval to reduce its participation in the proceeding to a participant as follows:

As discussed herein, HBE is seeking Commission approval for full intervenor or party status, under HAR § 6-61-55, as it believes that its interests and/or rights will be substantially impacted at least by the preliminary and informal issues raised by the Commission in its Order Initiating Investigation. However, as noted in Section 10 above, HBE will not be able to affirmatively state its position on the final issues to be addressed in this proceeding until subsequent to the issuance by the Commission of either a stipulated procedural order or procedural order, which will likely occur sometime after December 10, 2008. At that time, HBE will be able to review and analyze the final issues and may determine that its participation as a party in this proceeding could be reduced to simply monitoring the proceeding and stating a position on the issues to ensure, among other things, that its interests and/or rights are adequately protected. If HBE determines that its participation as a party to this proceeding could be reduced, it will submit the appropriate motion. As such, if HBE is allowed to participate in this proceeding, HBE respectfully requests that the Commission not limit or restrict its participation in this proceeding until after the final issues to be addressed in this proceeding are determined by the existing parties and/or intervenors and participants, if any.



unduly delay the proceeding. Furthermore, HBE asserts that its request to reduce its status from party or intervenor to participant is consistent with other proceedings. See, e.g., In re Puuwaawaa Waterworks, Inc., Docket No. 00-0005, Order No. 19152 (January 18, 2002) (approval of parties' stipulation to change status in that proceeding from an intervenor to a participant).

2. Conclusion and Summary of Relief Requested

Based on the foregoing, HBE respectfully requests that the Commission grant its Motion to amend its current status as an intervenor or party to be a participant in this proceeding, and allow HBE to continue to participate in this proceeding by:

(1) monitoring the proceeding by receiving all filings by the Commission and the other parties to ensure, among other things, that its interests and/or rights (financially or otherwise) are adequately protected, and (2) standing on its Opening Statement of Position, filed on February 25, 2009, as its final statement of position in accordance with the Stipulated Regulatory Schedule approved by the Commission in this proceeding.<sup>6</sup>

DATED: Honolulu, Hawaii, March 30, 2009.



KENT D. MORIHARA  
KRIS N. NAKAGAWA  
SANDRA L. WILHIDE  
RHONDA L. CHING

Morihara Lau & Fong LLP  
Attorneys for HAWAII BIOENERGY, LLC

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<sup>6</sup> In light of HBE's instant Motion to amend its status as an intervenor or party to be a participant in this proceeding and unless the Commission determines otherwise, it is HBE's understanding that it will not be required to participate and adhere to the remaining procedural steps set forth in the Stipulated Regulatory Schedule approved pursuant to the Order Approving Procedural Order (i.e., procedural step nos. 12 to 19). Notwithstanding the same, HBE stands on its Opening Statement of Position, filed on February 25, 2009 as its final statement of position currently due on March 30, 2009 (i.e., procedural step no. 11).

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**DECLARATION OF JOEL K. MATSUNAGA**

I, JOEL K. MATSUNAGA, declare as follows:

1. I am the Executive Vice President of Hawaii BioEnergy, LLC ("HBE").
2. I am offering this Declaration in support of HBE's Motion for Approval to Amend Its Status as an Intervenor/Party to a Participant in the instant docket.
3. I have reviewed HBE's Motion for Approval to Amend Its Status as an Intervenor/Party to a Participant, and I hereby declare that the statements and/or representations made therein are true and accurate to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the State of Hawaii that the foregoing is true and correct.

Executed March 30, 2009, at Honolulu, Hawaii.

  
\_\_\_\_\_  
JOEL K. MATSUNAGA

## CERTIFICATE OF SERVICE

I hereby certify that on this date I served copies of the foregoing document on the following parties, by causing copies hereof to be mailed, postage prepaid, properly addressed or hand delivered to the following:

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